IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No. 17 of 2006
In
COMPANY PETITION No. 415 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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O.L.OF M/S.SUVIN CEMENT PVT. LTD. - Complainant(s)
Versus
VINUBHAI LALUBHAI BAVISHI & 4 - Accused

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Appearance :
OFFICIAL LIQUIDATOR for Complainant(s) : 1,MR MRUGESH JANI for Complainant(s) : 1,
MR RS SANJANWALA for Accused : 1,3 - 4.
NOTICE SERVED for Accused : 2,
MR MANISH R BHATT for Accused : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/06/2007

ORAL JUDGMENT

1. By way of this criminal case, the complainant – Official Liquidator of M/s. Suvin Cement Private

Limited (in liquidation) has prayed to take cognizance of the default committed under section 454 (5) of the Companies Act; 1956 and to issue process against the accused Nos.1 to 5 and to try and punish them in accordance with the provisions of the law.

2. It has been submitted in the complaint that this Court vide order dated 23.6.2005 passed in Company Petition No. 415 of 1997 ordered for the winding up of M/s. Suvin Cement Private Limited and the Official Liquidator attached to this Court was appointed as Official Liquidator. That the accused Nos.1 to 5 were the Directors of the subject company as on the relevant date as per the rcords of the Registrar of Companies, Gujarat, Ahmedabad. That as per the provisions of section 454 of the Companies Act, 1956, the Ex-Directors of the company are required and legally bound to file with the Official Liquidator a Statement of Affairs of the company within 21 days from the date of winding up order or within such time as may be extended by the

Official Liquidator or the Hon'ble High Court, not exceeding 3 months duly completed with requirements and contents as stipulated in the interior text of the Statement of Affairs so as to serve its statutory purpose of taking effective possession of all assets stated therein. It is further submitted in the complaint that the necessary notices under section 454 of the Companies Act, 1956 were issued to the accused Nos.1 to 5 on 3.9.2005 and 20.9.2006 by Speed Post. It is submitted that inspite of the service of the aforesaid notice, neither the accused have remained personally present before the Official Liquidator nor they have submitted any Statement of Affairs as required under section 454 of the Companies Act, 1956 and thereby have committed default under section 454(5) of the Companies Act and therefore, it is requested to punish them. Having served with the summons issued by this Court, all the accused have appeared before this Court through their learned advocates. Shri R.S.Sanjanwala, learned advocate has appeared on

behalf of the accused Nos.1, 3 and 4 and Shri M.R.Bhatt, learned advocate has appeared on behalf of the accused No.5.

3. Shri Sanjanwala, learned advocate appearing for the original accused Nos.1, 3 and 4 has submitted that the original accused No.1 was in-charge of the day today affairs and management of the company in liquidation and was required to file the Statement of Affairs. Affidavit in reply is filed by the accused No.1. It is submitted by Shri Sanjanwala, learned advocate appearing for the original accused Nos.1, 3 and 4 that now the Statements of Affairs as required to be filed in accordance with law have been filed. It is submitted that due to bonafide mistake, the Statement of Affairs could not be filed by the accused No.1 and so far as accused Nos. 3 and 4 are concerned, they were the professional Directors and they were under the impression that the accused No.1 would file the Statement of Affairs. It is submitted that as the Statements of Affairs are already filed

which are bound to be in accordance with law, it is requested not to punish them and it is requested that instead of punishment and sending them to Jail, an appropriate penalty be imposed in lieu of the punishment and the same will suffice and the same will meets the ends of justice. So far as accused No.5 is concerned, Shri Bhatt, learned advocate has submitted that the accused No.5 was appointed as a nominee Director on the Board of the Company in place of one Shri V.V.Eswaran, IAS (Retired) under letter dated 13.10.1992 and he was appointed only as a nominee Director of the GIIC. It is further submitted that the GIIC under the letter dated 24.2.1999 decided to withdraw his name as a nominee Director from the Board of the Company. It is submitted that the company has been wound up under order dated 23.6.2005 and as per the provisions of section 454(2), the Statement of Affairs is required to be submitted and verified by the person/s “who are at the relevant dates the Director and by the person who is at that date the Manager, Secretary or other Chief

Officer of the Company.....". Therefore, it is requested that when the accused No.5 was the nominee Director and he was already withdrawn in the year 1992, no offence has been committed as alleged under section 454 (5) of the Act and therefore, it is requested to discharge the original accused No.5.

4. Heard the learned advocates appearing on behalf of the respective parties.

5. It is required to be noted that M/s. Suvin Cement Private Limited was ordered to be wound up by order dated 23.6.2006 and by notice dated 3.9.2005 and 20.9.2006 the accused were directed to file / submit the Statement of Affairs and inspite of service of the notices, the accused did not submit the Statement of Affairs as required under section 454 of the Companies Act, 1956. It is also required to be noted that subsequently the Statement of Affairs have been filed which are found to be in accordance with law and the said Statement of Affairs are filed

by the accused Nos. 1, 3 and 4. Now, as per the affidavit, the original accused No.1 was in charge of the company and was in day to day management of the company in liquidation and it was his primary duty to submit the Statement of Affairs. As per the affidavit accused Nos. 3 and 4 were the professional Directors at the relevant time. Even as a professional Director also they were suppose to file the Statement of Affairs. However, it is their contention that they were under the bonafide impression that as the original accused No.1 was in day to day affairs and management of the company, he would file the Statement of Affairs and therefore, they did not file any Statement of Affairs. Now, considering the fact that the Statement of Affairs are already filed, which are found to be in order and in accordance with law, this Court is of the opinion considering the affidavits and the submissions that instead of punishing the accused, the ends of justice will be met if the penalty for a suitable amount is imposed upon the accused. So far as accused No. 5 is

concerned, considering the fact that he was a nominee Director nominated by the GIIC and that he was already withdrawn as a nominee Director in the year 1992 and the company was ordered to be wound up in the year 2005, he is discharged, however, the original accused Nos.1, 3 and 4 are held guilty. Considering the request made on behalf of the original accused Nos. 1, 3 and 4 instead of punishing them, original accused No.1 is directed to pay the penalty which is quantified at Rs. 20,000/-; accused Nos. 3 and 4 are directed to pay the penalty which is quantified at Rs. 10,000/- each and the original accused Nos. 1, 3 and 4 are directed to deposit / pay the penalty, as stated hereinabove, with the Registry of this Court on or before 31st August, 2007.

6. With these, present Criminal Case is disposed of.

[M.R.Shah, J.]

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